

IN THE HIGH COURT OF GUJARAT
AT AHMEDABAD

Date of decision: 14th November 1995

CRIMINAL APPEAL NO.1218 OF 1995

THE HONOURABLE MR. JUSTICE A.N.DIVECHA

AND

THE HONOURABLE MR. JUSTICE H.R.SHELAT

Smt. Banna Dutta, Advocate, for the Appellant.

Shri S.R.Divetia, Additional Public Prosecutor, for the Respondent.

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1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involved a substantial question of law as to the interpretation of the Constitution of India, 1950 or..

thereunder?

5. Whether it is to be circulated to the Civil Judge?

Coram: A.N.Divecha & H.R.Shelat, JJ.

(14th November 1995)

Oral Judgment: (Per A.N.Divecha, J.)

The judgment and order of conviction of the appellant under section 302 and section 203 of the Indian Penal Code, 1860 (the IPC for brief) and sentence of rigorous imprisonment for life for the offence punishable under section 302 thereof and rigorous imprisonment of six months for the other offence passed by the learned Additional Sessions Judge at Nadiad on 5th December 1985 in Sessions Case No.84 of 1985 is under challenge in this appeal at the instance of the original accused.

2. The facts giving rise to this appeal move in a narrow compass. The accused was residing in her house at Valasan. She was a divorcee. She had borrowed Rs.400/from her brother's wife (the deceased for convenience). The deceased was a widow and had three small children. The deceased visited the house of the accused some time in the evening of 10th April 1985. It appears that the deceased demanded her due money from the accused. It appears that she uttered some harsh words also. Both of them later on went to sleep. It is the prosecution case that in the early hours of 11th April 1985 at about 4.30 a.m. the accused sprinkled kerosene on the deceased and set the latter to fire. She started burning and shouted for help. The accused also started shouting for help. Neighbours gathered around and tried to save the deceased but in vain. The deceased was carried to hospital. She was found dead thereat. The dead body was consigned to the Medical Officer concerned for the necessary post-mortem examination. In the meantime, the accused gave her version of the incident to neighbours that the deceased committed suicide. In the course of investigation, the aforesaid version of the accused was found to be false. Soon after the incident, the accused surrendered herself to the Police. Prior thereto, she appears to have confessed her crime before her neighbour, named, Harshadbhai Iswarbhai Patel. It appears that she also confessed her crime before the Police and she was therefore carried to the Judicial Magistrate, First Class at Borsad for recording her confession in accordance with section 164 of the Code of Criminal Procedure, 1973 (the Cr.PC for brief). It transpires from the material on record that the learned Magistrate ascertained from her whether or not she was under any undue influence from the Police and whether or not she was properly treated during her police custody.

When she reported to the learned Magistrate that she was not under any influence and that she was not ill-treated during the police custody, he tried to explain to her that it was not incumbent upon her to make any confession and that any voluntary confession made by her could be used against her in evidence. Despite such explanation, she volunteered to make her confession before him on the ground that she was sincerely repenting for what she had done. The learned Magistrate appears to have reduced to writing what transpired between the two at the relevant time. It may be mentioned at this stage that the learned Magistrate took care that no police official or officer remained present in or around the place where her confessional statement was being recorded. Despite such voluntariness on her part, the learned Magistrate gave her time of 48 hours to ponder over the matter. It is the prosecution version that the accused was brought before the learned Magistrate two days later and she stood firm on her ground for making her voluntary confessional statement. The learned Magistrate again explained to the accused that it was not incumbent upon her to make any confessional statement and that it might be used against her in evidence and no sympathy might be shown to her on account of her having confessed her guilt. It appears that she repeatedly stated before him that she was feeling guilty and she was therefore repenting for what she had done and was answerable to God and was therefore keen on making her confessional statement. Thereupon, her confessional statement was reduced to writing. On completion of the investigation, the necessary charge-sheet was submitted in the Court of the Judicial Magistrate, First Class at Anand. Since the case was triable by the Court of Sessions, the learned Magistrate committed it to the Court of Sessions for trial. It came to be registered as Sessions Case No.84 of 1985. The case was assigned to the learned Additional Sessions Judge for trial and disposal. The charge against the accused was framed on 5th November 1985. She did not plead guilty to the charge. She was thereupon tried. After recording evidence and recording further statement under section 313 of the Cr.P.C., by his judgment and order passed on 5th December 1985 in Sessions Case No.84 of 1985, the learned Additional Sessions Judge convicted the accused of the charge levelled against her and sentenced her to rigorous imprisonment for life for the offence punishable under section 302 of the IPC and rigorous imprisonment for six months for the offence punishable under section 203 thereof. Both the sentences were ordered to be run concurrently. The aggrieved accused has thereupon invoked the appellate jurisdiction of this Court by means

of this appeal of hers.

3. Learned Advocate Smt.Dutta for the accused has taken us through the entire evidence on record and has submitted that the prosecution has not been able to bring the guilt home to the accused beyond any reasonable doubt. According to her, the so-called confessional statement made by the accused could not have been relied on by her as it was not voluntary. It has been stated that the deceased died of a suicidal death and not any homicidal death. As against these submissions, learned Additional Public Prosecutor Shri Divetia for the State has submitted that the confession was recorded by the learned Judicial Magistrate, First Class at Borsad and it is not found tainted with any infirmity whatsoever. It transpires from the evidence on record, runs the submission of learned Additional Public Prosecutor Shri Divetia for the respondent, that she voluntarily gave her confessional statement. Besides, according to learned Additional Public Prosecutor Shri Divetia for the respondent, the accused has also made an extrajudicial confession before prosecution witness No.4 at Exh.16 on the record of the case. In that view of the matter, it has been urged on behalf of the respondent State that the impugned judgment and order of conviction and sentence calls for no interference by this Court in this appeal.

4. The confessional statement of the appellant -accused as recorded by the learned Judicial Magistrate, First Class at Borsad is at Exh.11 on the record of the case. Though, in view of the binding ruling of the Supreme Court in the case of MADI GANGA v. STATE OF ORISSA reported in AIR 1981 Supreme Court at page 1165 it was not necessary for the learned Magistrate to step into the witness box to support the confessional statement of the accused recorded by him, it must be fairly stated to his credit that he has stepped into the witness box and his oral testimony has been recorded at Exh.8. His oral testimony with respect to his recording of the confessional statement of the accused - appellant is very clear. It clearly transpires therefrom that he has fully complied the provisions of section 164 of the Cr.P.C. for the purpose. In order to allow the accused to have time to ponder, the learned Magistrate did not record the confessional statement of the accused soon after it was ascertained that she was under no influence of the police, that there was no fear or inducement for the purpose and that she was not ill-treated by the police during her police custody. On the contrary, the learned Magistrate adjourned the recording of her statement for two days. When the accused was produced before him two days later, she reiterated that she knew the consequence

of her confession before the Judicial Magistrate and that out of remorse she wanted to confess her guilt. Only thereafter, the learned Magistrate has proceeded to record her confessional statement at Exh.11. He has been subjected to cross-examination on behalf of the accused. Nothing material has been brought out therefrom to doubt the veracity of his oral testimony at Exh.8 or the recording of the confessional statement at Exh.11. We are of the opinion that the confessional statement at Exh.11 is tainted with no infirmity whatsoever. This piece of evidence by itself is sufficient to fasten the criminal liability to the accused with respect to the charge levelled against her.

5. Besides, it transpires from the oral testimony of prosecution witness No.4 at Exh.16 that she made her confession of guilt even before this witness not once but twice. The witness at Exh.16 was residing in the neighbourhood of the accused. After the incident when she was approached, she told the witness at Exh.16 that the deceased had committed suicide. He doubted her version. At that stage, he had stated at Exh.16 that she gave out that she killed the deceased. Again, when he went to the Police Station presumably for getting his statement recorded, he found her thereat and again she is reported to have confessed her guilt to this witness. It must be said to his credit that he has stood his ground well in his cross-examination on behalf of the accused. No suggestion whatsoever of any inimical or hostile attitude on his part towards her was put to him in his cross-examination. In that view of the matter, we find no hesitation in accepting his evidence at Exh.16.

6. In view of both her judicial and extrajudicial confession of her guilt, there is no hesitation in coming to the conclusion that the prosecution has established its case against the accused beyond any reasonable doubt. The learned trial Judge has rightly convicted and sentenced her for the offence with which she was charged at trial. We see no reason to interfere with the impugned judgment and order of conviction and sentence.

7. In the result, this appeal fails. It is hereby dismissed. The bail bonds of the accused - appellant are ordered to be cancelled. She is ordered to surrender to custody forthwith. In case she does not surrender to custody to serve her sentence, the learned Sessions Judge of Kheda at Nadiad shall issue the necessary warrant for the purpose.

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